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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL SMITH,

Defendant and Appellant.

C081486

(Super. Ct. No. 05F03177)

In 2007, defendant was sentenced to a 16-year aggregate term arising out of 21 counts. Seven years later defendant petitioned, under Proposition 47 (Pen. Code,¹ § 1170.18), to reduce some of his convictions to misdemeanors.

The trial court reduced four counts to misdemeanors, resulting in a 14-year aggregate prison term. The court, however, ran the misdemeanor terms consecutively

¹ Undesignated statutory references are to the Penal Code.

with the felony terms. The end result was that although defendant's prison term was reduced from 16 to 14 years, his release date did not change.

Defendant moved for reconsideration, asking that the court run his redesignated misdemeanors concurrently with his felonies. The trial court denied the motion for reconsideration, finding the prior resentencing appropriate.

Defendant then petitioned again to recall his sentence under section 1170.18, arguing one of his convictions for forgery (§ 470, subd. (d)) was eligible for resentencing. The trial court denied the petition, explaining the matter had already been considered and ruled on.

Defendant filed a timely notice of appeal.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests that we review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised of his right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

Whether the protections afforded by *Wende* and the United States Supreme Court decision in *Anders v. California* (1967) 386 U.S. 738 [18 L.Ed.2d 493] apply to an appeal from an order denying a petition brought pursuant to Proposition 47 remains an open question. Our Supreme Court has not spoken. The *Anders/Wende* procedures address appointed counsel's representation of an indigent criminal defendant in the first appeal as a matter of right and courts have been loath to expand their application to other proceedings or appeals. (See *Pennsylvania v. Finley* (1987) 481 U.S. 551 [95 L.Ed.2d 539]; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529; *In re Sade C.* (1996) 13 Cal.4th 952; *People v. Martinez* (2016) 246 Cal.App.4th 1226; *People v. Kisling* (2015) 239 Cal.App.4th 288; *People v. Serrano* (2012) 211 Cal.App.4th 496; *People v. Dobson* (2008) 161 Cal.App.4th 1422; *People v. Taylor* (2008) 160 Cal.App.4th 304; *People v.*

Thurman (2007) 157 Cal.App.4th 36; *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570.) Nonetheless, in the absence of Supreme Court authority to the contrary, we will adhere to *Wende* in the present case, where counsel has already undertaken to comply with *Wende* requirements and defendant has been afforded the opportunity to file a supplemental brief.

Having examined the record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

/s/
Robie, J.

We concur:

/s/
Raye, P. J.

/s/
Nicholson, J.